STATE OF CONNECTICUT
OFFICE OF STATE ETHICS

Advisory Opinion No. 2024-1

February 15, 2024

Question Presented: **The petitioner, a former employee of the state Department of Transportation ("DOT"), asks whether he may interact with DOT employees within a year of leaving state service to perform technical work on contracts between his employer, CHA Consulting, Inc. ("CHA"), and the DOT.**

Brief Answer: **Based on the facts presented, the petitioner may—under an existing, undisputed contract between CHA and the DOT, concerning which he had no involvement in the negotiation or award—interact with DOT employees within a year of leaving state service to perform technical work on that contract.**

At its February 15, 2024 regular meeting, the Citizen's Ethics Advisory Board ("Board") granted the petition for an advisory opinion submitted by Jon Hagert, a former DOT employee. The Board now issues this advisory opinion under General Statutes § 1-81 (a) (3) of the Code of Ethics for Public Officials ("Code").

Background

In his petition, Mr. Hagert provides the following facts for our consideration:

> After Jon Hagert's official retirement from the Connecticut Department of Transportation (DOT) on April 1, 2022, he

> was employed as a temporary (120-day) worker retiree (TWR) by DOT for the remainder of 2022 and again in calendar year 2023 until August 31, 2023. The DOT's purpose for employing Mr. Hagert as a TWR was to help write a new Bridge Design Manual for the DOT and to assist with other technical activities. As a TWR, Mr. Hagert did not participate in negotiation or award of any private employer's contract with the state agency, but performed only technical duties that involved no matters of actual or potential dispute between a private employer and the state agency. At no time did Mr. Hagert hold a position that appears on the DOT agency-wide organization chart and is therefore classified as a non-senior-level state employee.

In a subsequent email communication, Mr. Hagert provides the following additional facts:

1. My position prior to retirement was Transportation Supervising Engineer. The lowest level position on the agency-wide organization chart in my chain of command is Division Chief of Bridges. This is two positions above the Transportation Supervising Engineer (one layer between me and the Division Chief).

2. As a TWR, I reported to the Principal Engineer of Bridges. The Principal Engineer reports to the Division Chief, who is on the agency-wide organization chart. As a TWR, I did not supervise any employees. The position was that of a technical advisor to the Principal Engineer of Bridges.

3. For all CHA work:
   a. I did not have any discretionary power to affect any of the terms of CHA's contract with the DOT.
   b. I did not review proposals and make recommendations as to bids to be considered or accepted.
   c. My job responsibilities did not require me to become involved to a significant, material degree in the evaluation or decisional processes leading to the award of the contract.
   d. I did not exercise supervisory authority in the negotiation or award of the contract.

4. None of the contracts were signed within my last year of state service (the year prior to August 31, 2023)

5. None of the contracts were signed after I left state service (after August 31, 2023).

6. My proposed work for CHA Consulting, Inc. does not involve me in projects that I worked on while in state service except one project on which I spent an hour performing calculations to advise the Bridge Principal Engineer of possible choices for bridge joints, since I was the subject matter expert on that topic. At CHA, I am not assigned to that project, which is now in construction, but I could be asked for a technical opinion if a construction question arises.

Additional facts will be set forth as necessary.

Analysis

As to jurisdiction, General Statutes § 1-81 (a) (3) enables the Board to issue advisory opinions to "any person subject to the provisions of" the Code. The "person" here, Mr. Hagert, is a former DOT employee and, as such, is subject to the Code's post-state employment provisions. Accordingly, the Board is statutorily authorized to issue an advisory opinion to Mr. Hagert concerning the Code's application to his post-state employment.

Because Mr. Hagert left state service a mere six months ago[1], he is subject to the Code's two one-year bans, housed in subsections (b) and (f) of General Statutes § 1-84b, as well as its two lifetime bans, housed in General Statutes §§ 1-84a and 1-84b (a), each of which we will address and apply in turn.

As an initial matter, § 1-84b (f) prohibits, during the one-year period after leaving state service, certain former state employees from accepting post-state employment with certain contractors, and provides, in relevant part, as follows:

[1]Although Mr. Hagert retired from the DOT on April 1, 2022, he continued his employment with the DOT as a temporary worker retiree ("TWR"), aka "120-day worker," until August 31, 2023, and is, accordingly, considered to have been a state employee for purposes of the Code until August 31, 2023. Advisory Opinion No. 98-21.

> No former . . . state employee (1) who participated substantially in the negotiation or award of . . . a state contract valued at an amount of fifty thousand dollars or more . . . or (2) who supervised the negotiation or award of such a contract or agreement, shall accept employment with a party to the contract or agreement other than the state for a period of one year after his resignation from his state office or position if his resignation occurs less than one year after the contract or agreement is signed. . . .

The purpose underlying that language is this: "By destroying the incentive to handle contract negotiations so as to affect future employment it protects the State's interests and removes the suspicion that a State servant has conducted his work in a way to facilitate his future employment." Advisory Opinion No. 86-9.

Applying § 1-84b (f)'s language here, Mr. Hagert may not—for one year after he left state service—accept employment with a party to a state contract (such as CHA) valued at $50,000 or more if two things hold true: (1) he participated substantially in, or supervised, the negotiation or award of that contract, *and* (2) it was signed within his last year of state service.

As to what is meant by the terms "participated substantially" and "supervised," the regulations say only this: "substantial participation shall be construed to mean participation that was direct, extensive and substantive, not peripheral, clerical or ministerial." Regs., Conn. State Agencies § 1-81-38 (a). Fortunately, Advisory Opinion No. 87-8, which dates back to § 1-84b (f)'s inception, further expounds upon these terms, noting that the provision applies to state employees and public officials:

- "who have discretionary power to affect the terms of a contract—the specifications, for example";
- "who review proposals and make recommendations, other than clerical or perfunctory ones, as to bids to be considered or accepted";
- "whose responsibilities require them to become involved to a significant, material degree in the evaluation or decisional processes leading to the award of a contract";
- "who have such a major responsibility for awarding the contract—such as final approval—that it is unlikely that a person did not

> become involved personally and substantially in the contract award"; and
>
> - "who in fact exercise supervisory authority in the negotiation or award of a contract, although not specifically required to do so."

Put another way, "the application of § 1-84b (f) is not limited to final approval; rather, it includes all substantive involvement that leads to the final approval. For example, making material suggestions that affect the subsequent decision-making process, making recommendations to one's supervisors, or otherwise providing substantive input will trigger the § 1-84b (f) prohibition." Advisory Opinion No. 2018-2; see also Request for Advisory Opinion No. 0788 (1991) ("Contributing input which others may use to negotiate a . . . contract award is participation in the negotiation process. Only truly ministerial participation (e.g., as a typist) falls outside the language of § 1-84b (f).")

In this case, Mr. Hagert provides that "[n]one of the contracts [between DOT and CHA] were signed within [his] last year of state service (the year prior to August 31, 2023)." Based on this fact, § 1-84b (f) presents no impediment to his post-state employment with CHA.

Next, § 1-84b (b) provides, in relevant part, that

> [n]o former executive branch . . . state employee shall, for one year after leaving state service, represent anyone, other than the state, for compensation before the department, agency, board, commission, council or office in which he served at the time of his termination of service, concerning any matter in which the state has a substantial interest. . . .

Its purpose, as stated in Advisory Opinion No. 98-21, is to establish "a 'cooling-off' period to inhibit use of influence and contacts with one's former agency colleagues for improper financial gain."

The question here, then, is this: whether, within a year of leaving state service, Mr. Hagert may perform services under CHA's existing state contracts with the DOT—which would involve interaction with DOT employees (i.e., representation)—without violating § 1-84b (b). Under that provision's general rule, the answer is plainly no, for performing such services would require Mr. Hagert to

(1) "represent" (i.e., "do any activity that reveals [his] identity"; Advisory Opinion No. 89-27)

(2) someone "other than the state" (i.e., CHA)

(3) for compensation (i.e., he will be paid)

(4) before the department in which he served at the time of his termination of service (i.e., the DOT)

(5) concerning a matter in which there is a substantial state interest (i.e., a state contract).[2]

Although § 1-84b (b)'s general rule would bar any interaction between Mr. Hagert and the DOT while performing services under CHA's existing DOT contracts, there is a *narrow* exception to that rule for former non-senior-level state employees, a category into which Mr. Hagert fits.[3] As outlined in Advisory Opinion No. 2003-3:

> a former state employee who was not involved in the negotiation or award of the private employer's contract with the state agency, and who has been and will continue to perform only technical duties that involve no matters of actual or potential dispute between his new employer and the state

[2]"The state has a substantial interest in a matter whenever the finances, health, safety, or welfare of the State or one or more of its citizens will be substantively affected by the outcome." Advisory Opinion No. 96-6.

[3]"[T]his exception was not intended to, and does not, apply to former senior-level state officials or employees." Advisory Opinion No. 92-10. "In determining whether a DOT employee is considered a senior-level employee for purposes of this narrow exception, [the Office of State Ethics] staff has historically referred to the DOT organizational chart to distinguish between senior and non-senior staff." Request for Advisory Opinion No. 19480 (2022); see also Request for Advisory Opinion No. 19167 (2022) ("[w]hile the DOT's organization chart posted on its website provides some guidance, it is not, in itself, dispositive for purposes of determining whether the technical implementation exception applies to a specific set of facts"). Mr. Hagert notes that "[a]t no time did [he] hold a position that appears on the DOT agency-wide organization chart." In addition, both his pre-retirement position and TWR position had one layer of supervision between his position and the lowest position for that division on the DOT organization chart. Accordingly, neither his pre-retirement nor his TWR position are considered "senior-level" for purposes of the exception. See Advisory Opinion No. 2022-1 ("[b]ecause neither [the] name or job title [of a retired DOT Transportation Supervising Engineer] appear on the DOT organization chart, and his position fell under several layers of supervision, his position is not considered 'senior level' for purposes of the exception").

> agency, may accept employment with the outside contractor to work on implementation of the existing contract, without violating . . . §1-84b . . . (b).

This *narrow* exception allows only the "perform[ance] . . . [of] technical duties, such as contract implementation, which involve no matter at issue between the State, or any other party, and . . . [the] private employer." Advisory Opinion No. 2001-26. In other words, the former state employee must "strictly limit[ ] [his or] her work to implementation of the [contract] in question," and must not participate "in any matter at issue between [his or] her employer and [his or her former state employer] (e.g., contract amendment, contract extension, compliance with contract terms) . . . ." Id. Allowing the performance of such work permits the State to benefit from the former state employee's expertise in implementing the contract, while "offer[ing] [him or her] no opportunity for use of improper advantage." Advisory Opinion No. 1988-15.

In his petition, Mr. Hagert states unequivocally that "[he] did not participate in negotiation or award of *any* private employer's contract with the state agency, but performed only technical duties that involved no matters of actual or potential dispute between a private employer and the state agency." (Emphasis added.) He provides that none of the contracts at issue with CHA were signed after he left state service. He further provides, with respect to each of CHA's contracts with the DOT, that: he "did not have any discretionary power to affect any of the terms of CHA's contract with the DOT," he "did not review proposals and make recommendations as to bids to be considered or accepted," his "job responsibilities did not require [him] to become involved to a significant, material degree in the evaluation or decisional processes leading to the award of the contract," and he "did not exercise supervisory authority in the negotiation or award of the contract."

Here then, under this *narrow* exception, Mr. Hagert may perform technical duties under any undisputed contract, existing at the time of his separation from the state, between CHA and the DOT, where he had no involvement in the negotiation or with the award thereof (be it before or after leaving state service), and he may interact with DOT employees within a year of leaving state service *solely* to perform such technical work under said contracts. He may not, however, participate in any matter at issue (or which becomes at issue) between CHA and the DOT (i.e., contract amendment, contract extension, compliance with contract terms, etc.) and must strictly limit his work to contract implementation. *It bears repeating that the technical-*

implementation-of-an-existing-contract exception is very narrow and does not extend to general communication with one's former agency within one year of leaving state service.

Turning now to the two lifetime bans, the first, § 1-84b (a), provides, in relevant part, as follows:

> No former executive branch . . . state employee shall represent anyone other than the state, concerning any particular matter (1) in which he participated personally and substantially while in state service, and (2) in which the state has a substantial interest.

This provision's purpose is to prevent "side-switching in the midst of on-going state proceedings to obtain improper benefit in subsequent dealings involving the State's interests." Advisory Opinion No. 89-37. To that end, "represent" is very broadly defined as taking "any action whatsoever regarding any particular matter . . . ." Regs., Conn. State Agencies § 1-81-33. "Particular matter," however, is defined narrowly to include actions of specific application (i.e., contracts, investigations, inspections, etc.), rather than those of general application (i.e., statutes, regulations, general policy, etc.). Declaratory Ruling 2011-B. Finally, "substantial participation" is defined as "participation that was direct, extensive and substantive, not peripheral, clerical or ministerial." Regs., Conn. State Agencies § 1-81-32.

The narrow exception to § 1-84b (b) discussed above (i.e., technical implementation of an existing contract) applies as well to § 1-84b (a). See Advisory Opinion No. 2003-3; see also Request for Advisory Opinion No. 0642 (1991) ("[t]he Commission has, however, recognized an important exception . . . [which] allows work which is strictly technical in nature and does not involve the individual in any matter at issue between the State, or any other party, and the individual's private employer, e.g., engineering work implementing a previously awarded consultant's contract").

Mr. Hagert asserts that, while in state service, he worked on just one project involving CHA, and on that project, he "spent an hour performing calculations to advise the Bridge Principal Engineer of possible choices for bridge joints, since [he] was the subject matter expert on that topic." He further asserts that, at CHA, he is "not assigned to that project, which is now in construction, but [he] could be asked for a technical opinion if a construction question arises."

Here, we need not determine whether Mr. Hagert's "hour" spent performing "calculations to advise the Bridge Principal Engineer of possible choices for bridge joints" constituted "participat[ing] . . . substantially" in a "particular matter" for purposes of § 1-84b (a), because even if it did so, the narrow exception to § 1-84b (b) (i.e., technical implementation of an existing contract), discussed above, applies to § 1-84b (a) as well. He may, accordingly, complete technical work implementing this contract subject to the limitations discussed above, without running afoul of § 1-84b (a). *Once again, we stress that this exception is very narrow.*

The other lifetime ban—and the final post-state employment provision to which Mr. Hagert is subject—is § 1-84a. Under that provision, "[n]o former executive . . . branch . . . state employee shall disclose or use confidential information acquired in the course of and by reason of his official duties, for financial gain for himself or another person." The term "Confidential information" is defined, in General Statutes § 1-79 (21), to include the following:

> any information in the possession of the state, a state employee or a public official, whatever its form, which (A) is required not to be disclosed to the general public under any provision of the general statutes or federal law; or (B) falls within a category of permissibly nondisclosable information under the Freedom of Information Act, as defined in section 1-200, and which the appropriate agency, state employee or public official has decided not to disclose to the general public.

In the context of his post-state employment with CHA, then, Mr. Hagert must refrain from using any such confidential information gained while in state service for his own financial gain or for that of CHA (or any other person).

Conclusion

Based on the facts presented, Mr. Hagert may, under an existing, undisputed contract between CHA and the DOT, concerning which he had no involvement in the negotiation or award (be it before or after leaving state service), interact with DOT employees within a year of leaving state service solely to perform technical work on that contract.

By order of the Board,

Dated February 15, 2024

Chairperson